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MAILED

AUG 28 2009

OFFICE OF PETITIONS

In re Application of :
Montie H. MINER : DECISION ON
Patent No.: 5,738,192 : PETITION
Issue Date: April 14, 1998 :
Title of Invention: POWER TOOLS DRIVES

This is a decision in response to the correspondence filed June 11, 2009, where Petitioner submits a petition to accept unavoidably delayed payment of maintenance fee in an expired patent. The petition is properly treated under 37 CFR 1.378(b).

This Petition is hereby dismissed.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The patent issued April 14, 1998. The second maintenance fee could have been paid from April 14, 2005, through October 14, 2005, or with a surcharge during the period from October 15, 2005 through April 14, 2005. Accordingly, the patent expired at midnight April 14, 2006, for failure to timely submit the second maintenance fee.

The present petition is filed by Wanda M. O'Connor. A review of Office records reveal that Wanda M. O'Connor is not registered to practice before this Office. A review of the application file reveals that Wanda M. O'Connor is not listed as an inventor. A review of Office assignment records reveal that no assignment of the present application has been recorded with this Office.

The applicable Rule, 37 CFR 1.33, Correspondence respecting patent applications, reexamination proceedings, and other proceedings, states:

- (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
 - (1) A patent practitioner of record appointed in compliance with § 1.32(b);
 - (2) A patent practitioner not of record who acts in a representative capacity

under the provisions of § 1.34;
(3) An assignee as provided for under § 3.71(b) of this chapter; or
(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

In this instance, Petitioner herein is (1) not a practitioner of record; (2) not a practitioner not of record acting in a representative capacity; (3) not the assignee, or (4) not an applicant (inventor). The applicable rule requires that all papers must be signed by one of the above.

Because the petition has not been properly signed, the petition is dismissed. A properly executed petition, signed by a proper party as listed above in 37 CFR 1.33, is required before the merits of the petition may be considered.

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-0602.

cc: Montie H. Miner
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